

TRAN (Migration) [2018] AATA 5700 (20 December 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mrs THI DOAN TRANG TRAN

CASE NUMBER: 1620943

DIBP REFERENCE(S): CLF2013/211328

MEMBER: Jennifer Cripps Watts

DATE: 20 December 2018

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 visa:

- cl.801.221(6)(b) and (c) of Schedule 2 to the Regulations

Statement made on 20 December 2018 at 10:58am

CATCHWORDS

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – family violence – non-judicially determined claim – verbal abuse – threats of dog bite – paternity of applicant's child – credibility issues – nature of claimed relationship with sponsor – findings of Independent Expert report – time when relevant family violence occurred – decision under review remitted

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), rr 1.21, 1.22, 1.23, 1.24, 1.25; Schedule 2, cl 801.221

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 29 November 2016 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act).
3. The applicant applied for a Partner (Temporary) (Class UK) (Subclass 820) visa and a Partner (Residence) (Class BS) (Subclass 801) visa on 29 August 2013, on the basis of being in a spousal relationship with an Australian citizen, William Le Tran (sponsor), born July 1991. At that time, Class BS contained Subclasses 820 and 801. The Subclass 820 visa was granted on 7 March 2014.
4. For the applicant to be granted the visa, the primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.801.221 which requires the applicant to be the spouse or de facto partner of the sponsor, unless the relationship has ceased and certain circumstances exist. These include that the applicant, or a member of the family unit, has suffered family violence committed by the sponsor: cl.801.221(6)(b), (c)(i). The applicant claims this occurred in this case.
5. The delegate refused to grant the visa on the basis that the applicant did not meet cl.801.221 because the delegate was not satisfied the applicant was in a genuine and continuing relationship with her sponsor and that they were committed to shared life together.
6. On 17 October 2017, the Tribunal invited the applicant to her hearing that had been scheduled on 8 November 2017. A postponement of the hearing was requested. The request was on the basis that the applicant had only just appointed a migration agent and wished to have "...her application for review assessed under the Family Violence provisions set out in clause 820.2121(3)(b)(i)." The Tribunal was informed that, essentially, she would need time to provide evidence from psychologists, social workers and other specialists.
7. The request for postponement was considered and granted. A postponed hearing was scheduled on 15 January 2018 and the applicant was sent a hearing invitation.
8. Despite being granted a two month postponement to obtain the evidence she required, the applicant did not provide all the prescribed evidence for her non-judicially determined Family Violence claim before or at the hearing. Relevantly, she did not provide her own statutory declaration in support of the claim, although she did provide statements from two competent persons. The Tribunal, at the conclusion of the hearing, as a matter of fairness, advised her representative that the applicant would be given another week to provide her own statutory declaration about the claimed Family Violence: Division 5 of the Regulations, r.1.24 and r.1.25. The statutory declaration was subsequently provided, after the hearing.
9. The applicant attended the re-scheduled hearing on 15 January 2018 to give oral evidence. The Tribunal and applicant were assisted by an interpreter in the Vietnamese and English languages.
10. After the hearing, the Tribunal referred the applicant's domestic/family violence claim to an Independent Expert (IE). The report was received by the Tribunal on 1 October 2018.
11. The applicant was represented in relation to the review by her registered migration agent, Michael Cai, Migration Agent Registration Number 1799864.

12. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration on the basis of the finding by the IE that the applicant has suffered family violence.
13. The Tribunal is satisfied that the opinion is authorised by the Regulations, in that it is provided by an IE who is a person suitably qualified to make the assessment, is an employee of an organisation specified for this purpose, and was properly made. Under r.1.23 the Tribunal is required to take as correct an IE's opinion, properly made.
14. Where the IE's opinion is that a person has suffered relevant family violence, at least part of the violence that led to that opinion must have occurred while the married or de facto relationship existed. The Tribunal has considered the nature of the applicant's relationship with the sponsor.

CONSIDERATION OF CLAIMS AND EVIDENCE

15. The applicant applied for a subclass 820 partner visa on the basis of her marriage to the sponsor. The temporary partner visa was granted on 7 March 2014. Her subclass 801 permanent visa was refused on 29 November 2016 because the delegate was not satisfied the applicant and sponsor were in a genuine spouse relationship. After the visa was refused and she had lodged an application for review with the Tribunal, the applicant advised the Tribunal she would be claiming she suffered family violence. She had not previously made any claim in this regard during the application process with the Department. To the contrary, she had provided quite a lot of fairly convincing evidence in support of the claim that she and the sponsor were in a genuine and continuing married relationship.
16. To assess the claim of family violence, the Tribunal must first be satisfied that the applicant and sponsor were in a spouse relationship meeting s.5F of the Act at the time the claimed and relevant family violence occurred.
17. Under r.1.23 of the Regulations, a person is taken to have suffered or committed family violence if there is evidence tested before a court; or the visa application includes a non-judicially determined claim of family violence, and either the Minister (or the Tribunal on review) is satisfied that the alleged victim has suffered relevant family violence or an opinion of an IE has been given that the alleged victim has suffered relevant family violence. Relevant family violence is defined in r.1.21. These regulations, as relevant to this decision, are extracted in the attachment to this decision. The Tribunal notes that the violence, or part of the violence must have occurred during the relationship: r.1.23(3), (5), (7), (12), (14).
18. In the present case the applicant is seeking to establish family violence on the basis of a non-judicially determined claim of family violence.

Has a claim of family violence been made under the regulations?

19. Under r.1.23, a visa application is taken to include a non-judicially determined claim of family violence where either a joint undertaking to a court has been made by the alleged victim and alleged perpetrator or evidence in accordance with r.1.24 is provided.
20. A statutory declaration under r.1.25 must be made by the spouse or partner of the alleged perpetrator. If the alleged victim is the spouse or partner, the statutory declaration must set out the allegation of family violence, name the person alleged to have committed the relevant family violence and if the *conduct* was not directed at the spouse or partner, name the person to whom it is directed and their relationship with the deponent: r.1.25(2). There are different requirements if the family violence is alleged to have occurred to another person: r.1.25(3).

21. The applicant provided the Tribunal with the prescribed evidence: her own statutory declaration including the required information and statements from two competent persons. The Tribunal is satisfied the presented evidence meets the requirements of r.1.24. The Tribunal is satisfied that a non-judicially determined claim of family violence has been made under r.1.23.

22. Has the applicant suffered family violence?

23. Overall, the Tribunal found the applicant not to be a highly credible witness. Frequently throughout the hearing she was vague, non-responsive to questions and at times gave internally inconsistent answers. The Tribunal was left, at the end of the hearing, with significant doubts regarding the applicant's versions of events relating to her domestic or family violence claim and the genuineness of the spouse relationship from the time of the original application. The Tribunal was also left with concerns about the paternity of the applicant's baby, conceived (in around August 2016) and born (in May 2017) before the date the applicant claims her relationship with the sponsor broke down. The applicant claims that the sponsor is the biological father, but there is no verifiable evidence before the Tribunal to substantiate that claim. The sponsor's name is not on the birth certificate. Concerns regarding paternity were also raised in the delegate's decision, a copy of which was provided to the Tribunal.
24. The family violence claim was reported after the applicant's Subclass 801 visa was refused and after the applicant had been invited to her scheduled Tribunal hearing. At the hearing, the applicant said there was no physical violence, that the sponsor verbally abused her and threatened for his dog to bite her but that the dog never did bite her. She was very focused on this evidence about the dog, but was unable to clearly describe what type of dog it was or what size it was. The applicant and sponsor were living in the same house as the sponsor's mother, but the applicant said at the hearing that her mother-in-law never heard the sponsor verbally abusing her, which she said he did in English and that her English is not good.
25. The applicant has a baby who was born in May 2017 and she claims that the sponsor is the biological father. She did not include the sponsor's name on the birth certificate and said at the hearing that the child is not an Australian citizen. The applicant was asked why, if the sponsor (who is an Australian citizen) is the father, the child would not be an Australian citizen and said that this was because the sponsor told her not to put the child's name on the birth certificate. The applicant also gave evidence that the sponsor has refused to have anything to do with her or the baby. The Tribunal considers it to be internally inconsistent that the applicant says on the one hand that the child is not an Australian citizen and on the other that an Australian citizen is the child's father.
26. These matters considered together raised significant doubts in the Tribunal's mind as to whether the sponsor is the biological father of the applicant's child born in May 2017 and the claimed spouse relationship being exclusive. The applicant was informed at the hearing that the Tribunal may invite her to provide DNA evidence to confirm the child's parentage. Post-hearing, by letter dated 15 January 2018, the applicant was invited to provide this evidence and declined on the basis that she said she could not contact the sponsor and could not therefore get him to agree to take part in the DNA testing. In her response to the invitation to provide DNA evidence, received by the Tribunal on 5 February 2018, the applicant indicated that she had sought legal advice in relation to making an application for a paternity order for her baby in around May 2017 and an offered to provide the information to the Tribunal once the matter is finalised. She informed the Tribunal that she did 'not intend to provide DNA evidence'.
27. There has been no probative evidence provided to the Tribunal that the applicant has commenced any action in the Family Court or that there has been any matter finalised

relating to Family Court proceedings or whether there is now a court order confirming that the sponsor is the father of the applicant's child. The applicant responded that she had made many attempts to contact the sponsor and his mother after the hearing to get the sponsor to take part in the DNA testing, but provided no probative evidence of this. The Tribunal does not accept, as she claims, that the applicant was 'unable' to provide the DNA testing and is of the view that she is unwilling to provide it.

28. There is information before the Tribunal that, at times, the sponsor had represented himself to the Department of Human Services as 'single' during a period when the applicant claims she was in a spouse relationship with him. A s.376 certificate is on the Department file. The Tribunal overlooked mentioning it at the hearing and a s.359A letter was sent to the applicant post-hearing enclosing the certificate, which was considered by the Tribunal to be valid, inviting the applicant to comment or respond. A response was received. Essentially the response was that the applicant cannot have knowledge of what the sponsor's motives were in representing himself as single when he was married. The response has been considered.
29. Due to much conflicting and vague evidence that was provided by the applicant, which was considered to be problematic in terms of the Tribunal being satisfied that the applicant was credible, the Tribunal was not satisfied for the purposes of r.1.23 that the applicant had suffered family violence in accordance with that regulation. The Tribunal sought the opinion of an IE in around July 2018 and requested that a contact number for the applicant be provided so the IE could be provided with it. There was a delay on the part of the migration agent and applicant in providing the number, but after some weeks, a contact number was provided to the Tribunal to pass on to the IE.
30. The applicant's migration agent, Michael Cai, informed the Tribunal in an email dated 23 August 2018 that at that time the applicant was incarcerated 'for unrelated matters', but provided a mobile number the applicant could be contacted on. The Tribunal was informed that the applicant was planning to apply for bail. No additional information was provided about the reason for the incarceration or whether a bail application was made or successful.
31. On 3 October 2018, the Tribunal receipt a report from the IE, indicating that on 21 September 2018 she conducted an interview with the applicant with the assistance of a Vietnamese/English language interpreter. The IE provided an opinion, dated 1 October 2018, that the applicant had suffered relevant family violence.
32. Background and the relationship
33. The applicant is a Vietnamese citizen who first arrived in Australia holding a subclass 573 temporary student visa, on 21 June 2012. The student visa was valid to 20 April 2015. At the hearing the applicant was asked about her study, which was the purpose of her trip to Australia, and she said she came to study finance for two years. She didn't study finance but said she did study English for about six months and then intended to do an accounting course but her English was not good enough. The applicant claims she and the sponsor met not long after she arrived in 2012 and, on 30 June 2013, they married each other and lodged a partner visa application about two months later. She moved in with the sponsor and his mother. The applicant said that she stopped studying when she got married.
34. The applicant's Subclass 820 visa was granted on 7 March 2014. The Subclass 801 visa was refused on 29 November 2016 because the delegate was not satisfied that the applicant and sponsor were in a spousal relationship. The Tribunal has significant concerns about this as well. However, the applicant provided some information relating to r.1.15A(3)(a)-(d) matters indicating that she and the sponsor were married and living together up to March 2017 and this information has been considered. The Tribunal is not persuaded that the relationship continued after the applicant returned from a trip to Vietnam to see her family in

the second half of 2016 and stills holds some concerns about whether the relationship may have ended earlier than that.

35. Shortly before the Subclass 801 visa was refused, the applicant returned to Vietnam at the end of October 2016 – at the time she was about two or three months' pregnant - and said that when she returned to Australia her mother-in-law told her that she needed to pay rent if she wanted to continue living at the sponsor's house. The applicant claims that she moved out of the house that she and the sponsor both lived in with the sponsor's mother in March 2017 and moved in with a friend Thi Huong Li. In March 2017, the applicant was about seven months' pregnant. She gave birth in Sydney on 22 May 2017. On the evidence of the applicant she has not spoken to the sponsor or her mother-in-law since March 2017. The applicant said that her husband told her she wasn't allowed to put his name as the father on the baby's birth certificate. The birth certificate was provided to the Tribunal with no father's name on it.
36. The applicant said she has a maternal uncle in Sydney who was previously married to an aunty the applicant now lives with in Park Lane, Chippendale. She said her aunty, Tu Anh Cao, owns the apartment they live in, it has one bedroom, her aunty has the bedroom and the applicant and baby sleep in the living room on a sofa bed. The applicant said she looks after the baby during the day and works nights at a Vietnamese restaurant called Mumum and earns about \$10 an hour.
37. The applicant provided documents at the time of application, which are on the Department file. The applicant also provided documents to the Tribunal which were primarily in support of her family violence claim. There was limited evidence provided in support of the married relationship. However, there was a substantial amount of evidence on the Department file up to the time the Subclass 801 visa was refused in late 2016 and the Tribunal has had regard to this evidence.
38. In the delegate's decision, the paternity of the child is raised as a matter of concern. It remains a significant concern in the mind of the Tribunal.
39. The lack of evidence of the child's paternity is considered a significant matter impacting negatively on the nature of the applicant's claimed relationship with the sponsor, specifically in terms of there being a mutual commitment to a shared life together. A lack of verifiable evidence that the sponsor is the biological father of the applicant's child raises serious questions in the Tribunal's mind as to the exclusivity of the relationship the applicant claims was genuine and continuing up to March 2017. The sponsor's actions towards the applicant, including that he appears to have not provided her with any companionship and emotional support throughout the pregnancy – on her evidence, he did not attend the baby's birth and has had no contact with her since the birth, other than telling her on one occasion never to contact him again - does not indicate to the Tribunal that he considers himself to be the father of the child. There is evidence from the applicant that when she told the sponsor she was pregnant, he told her to have an abortion. She said that her mother-in-law had indicated that she wanted them have a child, but when the applicant's mother-in-law found out about the pregnancy, she gave her no support, and her sponsor and mother-in-law stopped talking to her, even though they lived in the same house.
40. On 8 May 2018, the Tribunal was informed that the applicant had contacted a barrister and sought legal advice in relation to making an application for a paternity order. An undertaking to provide evidence relating to these proceedings was given, but no additional evidence has been provided to the Tribunal.
41. As discussed, the Tribunal has some significant concerns about certain aspects of the relationship between the sponsor and applicant, in particular the matters surrounding their

living situation in 2016 and 2017, including that the sponsor and his mother tried to charge the applicant rent to live in their home in late 2016. Another concern is the birth of the applicant's baby in May 2017 without convincing or independently verifiable evidence that the baby is the child of the sponsor, despite requests being made for the information, undertakings being given to provide it and the fact that no additional information has been provided.

42. The Tribunal is bound to accept the opinion of the IE. The report does not provide any information as to when the relationship broke down, but gives a history of what the applicant says happened during the relationship. There is evidence the applicant was assessed by a psychologist and social worker she was referred to by her migration agent towards the end of 2016. Having regard to the IE's opinion and documentary evidence on the Department file and for the purpose of making a decision, the Tribunal accepts that the applicant and sponsor were in a relationship up until around the end of 2016, but no later.
43. The Department granted the applicant's Subclass 820 visa in 2014, satisfied that she was in a spouse relationship with the sponsor. In November 2016, the permanent Subclass 801 visa was refused.
44. The applicant provided financial, social, household and commitment evidence at the time of application and provided some additional evidence up to the time of this decision.
45. The Tribunal has reviewed the financial evidence that the parties provided when the Subclass 801 visa was being assessed. There is some evidence to suggest they shared finances at certain times up until possibly the end of 2016.
46. The Tribunal acknowledges that the parties appear to have lived in the same house before the applicant, in March 2017, moved out of the house she and the sponsor lived in with the sponsor's mother. However, as the applicant gave evidence at the hearing that the sponsor and his mother didn't speak to her and asked her to pay rent from the time she returned to Australia from Vietnam in October 2016, the Tribunal is not convinced the relationship continued after that time. It is not considered reasonable to accept that an applicant in a married relationship with her sponsor would live in a house where she is ignored by him and required to pay rent is in a genuine and continuing relationship.
47. There has been evidence provided that the parties represented themselves as a married couple to friends and family up to around the end of 2016. This is accepted.
48. Notwithstanding the Tribunal's significant concerns about the level of support and commitment the applicant and sponsor provided to each other, it is accepted that up until around the middle of 2016 they cohabiting in Sydney, then the applicant travelled to Vietnam, and when she returned the relationship broke down.
49. The Tribunal has had regard to the IE's report which refers to the applicant and sponsor having lived together with the family violence occurred.
50. Having considered all of the evidence before it, the Tribunal is satisfied, although not without reservations, but on balance, that the applicant and sponsor were in a relationship until the end of 2016 when the relationship broke down, but not up to March 2017 as the applicant claims. However, notwithstanding the Tribunal's concerns, for the purposes of r.1.23, the Tribunal finds that the family violence, or part of the family violence, committed by the sponsor on the applicant occurred whilst the parties were in the relationship. As such, the applicant is taken to have suffered family violence in the relevant sense: r.1.22.

51. Given that there has been information provided to the Tribunal by the applicant that she was incarcerated and intending to apply for bail in August 2018 and there was and may continue to be a criminal matter or matters on foot, any concerns as to the applicant's character (s.501 of the Act) are a matter for the Department to consider.
52. As the relationship between the applicant and sponsor has ceased, and the applicant has suffered relevant family violence committed by the sponsor, the applicant meets the requirements of cl.801.221(6)(b) and (c). Given these findings, the appropriate course is to remit the visa application to the Minister to consider the remaining criteria for the visa.

DECISION

53. The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 visa:
 - cl.801.221(6)(b) and (c) of Schedule 2 to the Regulations.

54.

Jennifer Cripps Watts
Member

ATTACHMENT – EXTRACTS FROM THE MIGRATION REGULATIONS 1994

1.21 Interpretation

In this Division:

independent expert means a person who:

- (a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and
- (b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.

non-judicially determined claim of family violence has the meaning given by subregulations 1.23(8) and (9).

relevant family violence means conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
 - (b) a member of the family unit of the alleged victim; or
 - (c) a member of the family unit of the alleged perpetrator; or
 - (d) the property of the alleged victim; or
 - (e) the property of a member of the family unit of the alleged victim; or
 - (f) the property of a member of the family unit of the alleged perpetrator;
- that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.

statutory declaration means a statutory declaration under the *Statutory Declarations Act 1959*.

violence includes a threat of violence.

...

1.23 When is a person taken to have suffered or committed family violence?

- (1) For these Regulations, this regulation explains when:

- (a) a person (the alleged victim) is taken to have suffered family violence; and
- (b) another person (the alleged perpetrator) is taken to have committed family violence in relation to the alleged victim.

Note Schedule 2 sets out which visas may be granted on the basis of a person having suffered family violence. The criteria to be satisfied for the visa to be granted set out which persons may be taken to have suffered family violence, and how those persons are related to the spouse or de facto partner of the alleged perpetrator mentioned in this regulation.

Circumstances in which family violence is suffered and committed — injunction under Family Law Act 1975

- (2) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if, on the application of the alleged victim, a court has granted an injunction under paragraph 114(1)(a), (b) or (c) of the Family Law Act 1975 against the alleged perpetrator.
- (3) For subregulation (2), the violence, or part of the violence, that led to the granting of the injunction must have occurred while the married relationship between the alleged perpetrator and the spouse of the alleged perpetrator existed.

Circumstances in which family violence is suffered and committed — court order

- (4) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) a court has made an order under a law of a State or Territory against the alleged perpetrator for the protection of the alleged victim from violence; and
 - (b) [...] order was made after the court had given the alleged perpetrator an opportunity to be heard, or otherwise to make submissions to the court, in relation to the matter.

- (5) For subregulation (4), the violence, or part of the violence, that led to the granting of the order must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — conviction

- (6) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if a court has:
- (a) convicted the alleged perpetrator of an offence of violence against the alleged victim; or
 - (b) recorded a finding of guilt against the alleged perpetrator in respect of an offence of violence against the alleged victim.
- (7) For subregulation (6), the violence, or part of the violence, that led to the conviction or recording of a finding of guilt must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.

Circumstances in which family violence is suffered and committed — non-judicially determined claim of family violence

- (8) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim and the alleged perpetrator have made a joint undertaking to a court in relation to proceedings in which an allegation is before the court that the alleged perpetrator has committed an act of violence against the alleged victim.
- (9) For these Regulations, an application for a visa is taken to include a non-judicially determined claim of family violence if:
- (a) the applicant seeks to satisfy a prescribed criterion that the applicant, or another person mentioned in the criterion, has suffered family violence; and
 - (b) the alleged victim is:
 - (i) a spouse or de facto partner of the alleged perpetrator; or
 - (ii) a dependent child of:
 - (A) the alleged perpetrator; or
 - (B) the spouse or de facto partner of the alleged perpetrator; or
 - (C) both the alleged perpetrator and his or her spouse or de facto partner; or
 - (iii) a member of the family unit of a spouse or de facto partner of the alleged perpetrator (being a member of the family unit who has made a combined application for a visa with the spouse or de facto partner); and
 - (c) the alleged victim or another person on the alleged victim's behalf has presented evidence in accordance with regulation 1.24 that:
 - (i) the alleged victim has suffered relevant family violence; and
 - (ii) the alleged perpetrator committed that relevant family violence.
- (10) If an application for a visa includes a non-judicially determined claim of family violence:
- (a) the Minister must consider whether the alleged victim has suffered relevant family violence; and
 - (b) if the Minister is satisfied that the alleged victim has suffered the relevant family violence, the Minister must consider the application on that basis; and
 - (c) if the Minister is not satisfied that the alleged victim has suffered the relevant family violence:
 - (i) the Minister must seek the opinion of an independent expert about whether the alleged victim has suffered the relevant family violence; and
 - (ii) the Minister must take an independent expert's opinion on the matter to be correct for the purposes of deciding whether the alleged victim satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.
- (11) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
- (a) an application for a visa includes a non-judicially determined claim of family violence; and

- (b) the Minister is satisfied under paragraph (10)(b) that the alleged victim has suffered relevant family violence.
- (12) For subregulation (11), the Minister must be satisfied that the relevant family violence, or part of the relevant family violence, occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.
- (13) The alleged victim is taken to have suffered family violence, and the alleged perpetrator is taken to have committed family violence, if:
 - (a) an application for a visa includes a non-judicially determined claim of family violence; and
 - (b) the Minister is required by subparagraph (10)(c)(ii) to take as correct an opinion of an independent expert that the alleged victim has suffered relevant family violence.
- (14) For subregulation (13), the violence, or part of the violence, that led to the independent expert having the opinion that the alleged victim has suffered relevant family violence must have occurred while the married relationship or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator.